MARYLAND DEPARTMENT OF THE ENVIRONMENT
WATER MANAGEMENT ADMINISTRATION
TIDAL WETLANDS DIVISION
NONTIDAL WETLANDS AND WATERWAYS DIVISION

SULLIVAN COVE PIERS
SUMMARY BASIS OF DECISION

It is the goal of the State to preserve its tidal and nontidal wetlands, prevent their loss and despoliation, and strive for a net resource gain in tidal wetland acreage and function. An applicant for the construction of a pier pursuant §16-202 of the Environment Article, Annotated Code of Maryland or a Nontidal Wetlands and Waterways Permit pursuant to §5-906 of the Environment Article, Annotated Code of Maryland must design the project to first avoid and then minimize the loss of tidal or nontidal wetlands. In granting, denying, or limiting any authorization, the State considers the effect of the proposed work with reference to impacts on plant, fish and wildlife resources, as well as the public policy set forth in law and regulation. The Maryland Department of the Environment (MDE or Department) is reviewing three applications requesting to construct piers to access Sullivan Cove on the Severn River in Severna Park, Anne Arundel County. The following findings are the result of MDE's evaluation of the proposed Sullivan Cove piers.

I. NAME OF APPLICANTS:

Dann Thomasson	Tidal Wetlands License Application 04-PR-0642 Nontidal Wetlands and Waterways Application 08-NT-0196
Alex Schmidt	Tidal Wetlands License Application 07-PR-1607 Nontidal Wetlands and Waterways Application 07-NT-0455
Thomas Jackson	Tidal Wetlands License Application 07-PR-1775 Nontidal Wetlands and Waterways Application 07-NT-0456

II. DEPARTMENT OF THE ENVIRONMENT REVIEWERS:

Tidal Wetland Division	Robert Cuthbertson
Nontidal Wetlands and Waterways Division	Judy Broersma

III. DESCRIPTION AND LOCATION OF PROPOSED WORK:

Dann Thomasson has requested a Tidal Wetlands License to construct a 458-foot long by 6-foot wide elevated joint-use pier of which 339 linear feet cross tidal wetlands, 101 linear feet cross upland, and 18 linear feet cross nontidal wetlands (See below); and a 210-foot long by 6-foot wide timber pier, which includes a 10-foot by 20-foot "L" head, and a 20-foot long by 3-foot wide finger pier. In addition, the application includes the emplacement of two mooring piles and two boatlift piles, and the installation of a boatlift. All requested work will be performed within a maximum of 250 feet channelward of the

mean high water line as depicted on revised plans dated February 11, 2009. The project site is located at 216 Old County Road, Severna Park, Anne Arundel County, Maryland.

Mr. Thomasson has also requested a Nontidal Wetlands and Waterways Letter of Authorization to facilitate the construction of the joint-use pier. The application includes an 18 foot long by 6 foot wide elevated boardwalk, temporarily impacting 108 square feet of forested nontidal wetlands and 300 square feet of regulated nontidal wetland buffer.

Alex Schmidt has requested a Tidal Wetlands License to construct a 223-foot long by 3-foot wide elevated timber walkway of which 195 linear feet are over tidal wetlands, 10 linear feet are over upland, and 18 linear feet are over nontidal wetlands (See below); and a 200-foot long by 6-foot wide timber pier, which includes a 10-foot long by 6-foot wide walkway over upland, a 10-foot by 20-foot "L" head, and a 20-foot long by 3-foot wide finger pier. In addition, the application includes the emplacement of three mooring piles and four boatlift piles, and the installation of a boatlift. All requested work will be performed within a maximum of 190 feet channelward of the mean high water line as depicted on revised plans dated February 11, 2009. The project site is located at 212 Old County Road, Severna Park, Anne Arundel County, Maryland.

Mr. Schmidt has also requested a Nontidal Wetlands and Waterways Letter of Authorization to facilitate the construction of the walkway, including two sections of elevated boardwalk. One section is 18 feet long by 3 feet wide, temporarily impacting 54 square feet of emergent nontidal wetlands and 150 square feet of regulated nontidal wetland buffer. The other section is 80 feet long by 6 feet wide, temporarily impacting 480 square feet of emergent nontidal wetlands and 300 square feet of regulated nontidal wetland buffer.

Thomas Jackson has requested a Tidal Wetlands License to construct a 458-foot long by 6-foot wide elevated joint-use pier of which 339 linear feet cross tidal wetlands, 101 linear feet cross upland, and 18 linear feet cross nontidal wetlands (See below); and a 190-foot long by 6-foot wide timber pier, which includes a 10-foot by 20-foot "L" head and a 20-foot long by 3-foot wide finger pier. In addition, the application includes the emplacement of two mooring piles and two boatlift piles, and the installation of a boatlift. All requested work will be performed within a maximum of 220 feet channelward of the mean high water line as depicted on revised plans dated February 11, 2009. The project site is located in the Severn River at 214 Old County Road, Severna Park, Anne Arundel County, Maryland.

Mr. Jackson has also requested a Nontidal Wetlands and Waterways Letter of Authorization to facilitate the construction of the joint-use pier. The application includes an 18 foot long by 6 foot wide elevated boardwalk, temporarily impacting 108 square feet of forested nontidal wetlands and 300 square feet of regulated nontidal wetland buffer.

IV. PROJECT PURPOSE:

The project purpose for each application is to provide access to the Severn River.

V. TIDAL WETLAND REGULATORY PROCESS:

The Tidal Wetlands Act (Title 16 of the Environment Article, Annotated Code of Maryland, entitled Wetlands and Riparian Rights) was enacted by the Maryland General Assembly in 1970. The new law acknowledged that many tidal wetlands had been lost or despoiled throughout the State by unregulated activities such as dredging, dumping and filling, and that remaining tidal wetlands were in jeopardy. The law established a comprehensive plan to restrict and regulate activities conducted in tidal wetlands in order to preserve and protect them.

The process to regulate piers was formalized in 1994 when both the Board and MDE adopted new tidal wetland regulations and licensing procedures. Except for applications that meet certain criteria related to the construction of structures on piers, the Board delegated its authority to MDE to review applications for construction or replacement of pilings, fixed or floating piers, decks, walkways, boathouses, and related structures on piers. The delegation was part of a comprehensive package to expedite review and approval of many small shore erosion control and pier projects and provide clear guidance to the public concerning the State's management of tidal wetlands.

VI. NONTIDAL WETLAND AND WATERWAY REGULATORY PROCESS:

For activities impacting less than 5,000 square feet of nontidal wetlands, MDE issues a Letter of Authorization (Code of Maryland Regulations 26.23.03.01). These activities do not require an alternative site analysis; public notice; or mitigation of permanent impacts by the applicant if the project site lies outside of the Critical Area for the Chesapeake and Atlantic Coastal Bays. In those instances, MDE is responsible for mitigation.

VII. PUBLIC PARTICIPATION:

When there is no statutory requirement to conduct a public hearing, MDE has the discretion to conduct a public meeting in instances where it knows community interest exists. MDE exercised that discretion for the three applications under consideration. The June 17, 2008 informational meeting conducted by MDE for Sullivan Cove was coordinated with the Olde Severna Park Improvement Association, which has opposed the three pier applications. The meeting allowed interested persons an opportunity to meet with the Department and comment on the applications. More than 100 people attended the meeting.

VIII. COMMENTS FROM INTERESTED PARTIES:

Comments offered during the public informational meeting were almost unanimously against the proposed projects. However, the Department has received letters and e-mails both opposing and supporting the construction of the proposed piers. Several comments are highlighted below.

Olde Severna Park Improvement Association, Inc.: The Olde Severna Park Improvement Association (OSPIA or Association) is organized to promote the general welfare of the residents of Olde Severna Park in Anne Arundel County; to regulate and maintain its parks, beach, walks and landings; own real estate for the benefit of residents; and concern itself in any other matters affecting the well being of the community. While initially opposed to the projects, the OSPIA has refined its position. The Association no longer objects to piers in the Severn River as long as the tidal pond crossing is eliminated from the plans. According to OSPIA, the piers should be accessed by walking along the shoreline from the Hatton Memorial Community Beach.

The OSPIA claims that the proposed construction methods will adversely affect the environment of the area, forever altering the morphology of the wetlands. It claims that the aesthetics of Sullivan Cove, one of the last pristine reaches of shoreline and a "Gem of the Severn," will be impacted forever. In addition, construction of the piers will harm the fragile marsh system by adversely impacting fish resources, submerged aquatic vegetation (SAV), and rare spotted turtles; eliminating shy birds such as the American Black Duck, Least Bittern and Virginia Rail; and damaging habitat of Atlantic White Cedars. The OSPIA also worries about the piers contributing to a decline in water quality by releasing pollutants stored in the wetland substrate.

The OSPIA stated that it offered the applicants slips at the community marina and a mooring ball in the designated mooring field approved by DNR. The applicants rejected the offer because they prefer to exercise their riparian rights.

The Severn Riverkeeper Program: The Severn Riverkeeper stated that access for a riparian owner is not an absolute right to build a pier. The OSPIA has granted a mooring ball in a registered DNR mooring field and this should suffice for access to navigable waters. According to the Riverkeeper, the mooring field allows access to navigable waters without destroying state wetlands. In addition, there is "no disagreement about the important ecological, recreational and aesthetic value of these wetlands, which would be destroyed by the construction of the piers. The Riverkeeper questioned "whether the intent and language of the Maryland Wetlands Law will be applied and the permits denied." He called for a public hearing and stated that the case should be decided by the Board of Public Works.

Severn River Association: The Severn River Association (SRA) stated that MDE failed to support the Governor's environmental goals and lacked the courage or wisdom to use tools to achieve goals sought by the public and Governor. The SRA went on to state their interest in Atlantic White Cedars and noted that Sullivan Cove was an incubator to a rich diversity of aquatic and terrestrial life. The SRA highlighted that fact that the Severn River was designated as a "Maryland Scenic River" and that government must take whatever action is necessary to protect and enhance the qualities of the Severn River. Finally, the SRA stated that the issuance of permits would be incompatible with the scenic river designation and that the proposed piers and bridges should be denied to protect the sensitive nature of Sullivan Cove.

Supporting Letters and E-mails: Comments supporting the construction of the piers focus on the fact that the State's highest court affirmed that the applicants, and not the OSPIA, hold the riparian rights for these properties. Supporters also note that the applicants have modified the scope of the projects in order to reduce environmental impacts and that they should be allowed to move forward with the planned enhancements to their properties. Finally, supporters believe that denying these permits would be in direct conflict with an individual's property rights.

IX. COMMENTS BY LOCAL, STATE, OR FEDERAL AGENCIES:

Anne Arundel County: Anne Arundel County has asked MDE to present the proposed projects to the Maryland Board of Public Works in order to "give the greater community an opportunity to be heard in a public forum." The County has also issued a permit authorizing the construction of the Schmidt walkway.

Maryland Historical Trust: The Maryland Historical Trust determined that there are no historic properties affected by the proposed undertaking.

National Marine Fisheries Service: The National Marine Fisheries Service did not object to the proposed projects.

Critical Area Commission for the Chesapeake and Atlantic Coastal Bay: The Critical Area Commission (CAC or Commission) has acknowledged that it has no jurisdiction over the piers or the walkways leading up to them. According to the CAC, within State government, it has long been established that jurisdiction rests in the Department of the Environment.

- First, as a general statement of law, § 5-203(a) of the Environment Article provides that the Department of the Environment has "...power, regulation, and control over the water resources of the State within the boundaries of [the] tidal waters ...," including the tidal wetlands in Sullivan Cove.
- Second, in 1986 when the Critical Area criteria were adopted, including those for water-dependent facilities, the General Assembly specifically decided at COMAR 27.01.03.01C that Commission purview would "(e)xclude[d]...individual private piers installed or maintained by riparian landowners, ..." – that is, the type of permits applied for in Sullivan Cove.
- Third, at § 8–1808.4(b)(1) of the Natural Resources Article, which is a part of the subtitle where the Critical Area Program is established in statute, the General Assembly defined "pier" to mean "...any pier, wharf, dock, *walkway* (emphasis supplied), bulkhead, breakwater, piles, or other similar structure." A similar provision is also found at § 16-101(h) of the Environment Article. Thus, the Critical Area Commission likewise does not have jurisdiction over the walkways leading up to the piers now at issue.

It is important to note, however, that the CAC has had an opportunity to review the applications in conjunction with MDE and DNR and that the plans have been adjusted to reflect their comments. In particular, the steps leading from the piers to the Severn River beach have been removed from the plans.

Maryland Department of Natural Resources: MDE received comments from the DNR on the original pier configurations in April 2008. The DNR stated that the proposed piers would have a cumulative impact that could alter the hydrology and composition of the tidal wetland community and adjacent bog, and that impacts to tidal flow may also be experienced. In addition, DNR expressed concerns that littoral drift in the area may be altered, resulting in changes to the hydrology and vegetation composition of the adjacent tidal and nontidal ponds. Specifically, DNR made the following points:

- Atlantic white cedar and Pitch pine rim the east side of the tidal pond, occupying a narrow band of nontidal wetland at the base of the forested slope. The proposals for three piers in such close proximity across the northern half of this wetland system may result in cumulative impacts that could alter the hydrology and composition of the tidal wetland community and adjacent bog.
- Longshore movement of sand and other sediments is directly affected by structures placed in the waterway. The installation of these piers may disrupt the current longshore movement of sediment and may result in changes to the hydrology and vegetation composition of the adjacent tidal and nontidal ponds. One of the piers is actually proposed to be built right over the inlet that feeds the tidal pond. Sand accretion in this area would likely reduce the daily tidal exchange. A reduction in daily tidal flow could increase the elevation and amount of water in the tidal pond and, possibly, the nontidal ponds that feed into it.
- The cumulative impacts of the piers could be greatly reduced by constructing a single pier on the northern-most property (Schmidt) and providing legal access to that pier to the owners of the two parcels to the south. This pier would require the least disturbance to wetlands and could be sized to meet the needs of all three property owners.

X. REVISED APPLICATIONS:

Since initiating the public participation process in June 2008, MDE has required the applicants to avoid and minimize the impacts associated with the proposed piers. On September 11, 2008, MDE received revised plans for the piers, which included a single joint-use pier crossing the tidal pond, sited to avoid sensitive species and elevated to protect the marsh and navigation. The joint-use pier and its configuration also eliminate the direct impact to the inlet feeding the tidal pond, reducing concerns about sand deposition from littoral drift. The length of the piers in the Severn River has also been reduced based on new bathymetry performed by DNR at the request of MDE.

Shortly after receiving revised plans from the applicants, MDE reviewed the changes with DNR. According to DNR, the location of the joint-use pier will not affect the Atlantic white cedar trees and there will be less detrimental impact to the tidal marsh by

eliminating construction of one length of walkway from the upland to the edge of Sullivan Cove. The DNR also stated that the relocation of the former middle pier away from the inlet will likely reduce potential impacts to daily tidal flow into the tidal pond.

XI. ENVIRONMENTAL ISSUES:

Since many of the comments received by MDE discussed the uniqueness of Sullivan Cove and expressed concern about the environmental damage that may be caused by the proposed projects, MDE formed a Review Team consisting of resource managers from CAC and DNR. The Review Team met to evaluate the proposed projects and their potential impact on the Sullivan Cove and the adjacent tidal pond and wetlands. The meeting also provided an opportunity to hear a presentation from Dr. Bruce Vasilas of the University of Delaware describing the results of research funded by MDE regarding the environmental impact of piers in tidal marshes of Worcester County, Maryland.

Uniqueness Of Sullivan Cove: Sullivan Cove is listed in the publication "Gems of the Severn" published by the Severn River Commission in 1988, establishing it as a unique and valuable area for both fauna and flora. The first few sentences of the Executive Summary state:

> *"Over 500 gem sites, areas and special features have been found in the Severn River watershed. Some are of ecological importance, some of historic value, and some of archaeological significance. These are worthy of clear identification, protection and appreciation."*

The document describes ecological, historical and archaeological features located in each of the 50 sub-watersheds of the Severn. Sullivan Cove is described as "one of the largest unbroken tidal marshes on the Severn" and "one of the most significant waterfowl habitats in the entire Severn River".

The Department reviewed approximately 50 natural area sites identified by the "Gems" document and determined that 12 sites have similar characteristics to Sullivan Cove. Sullivan Cove remains unique, however, because it is adjacent to approximately seven acres of marsh, as opposed to the small, fringe marshes associated with the other sites. Although the Review Team assembled by MDE had not conducted a comprehensive survey of similar areas state-wide, it believed that there were many similar tidal marsh areas bordering the Chesapeake Bay and the Atlantic Coastal Bays based on many years of experience working on wetland issues and reviewing wetland permits.

Impact of Piers on the Environment: In 2004, the Department sponsored research by the University of Delaware to evaluate the impact of long piers on marshes and wildlife in the Atlantic Coastal Bays. Dr. Vasilas' research team located and inspected 224 long piers and selected 46 sites for detailed analysis, including 24 pier sites and 22 control sites (similar marsh areas not affected by piers). At each site wildlife, habitat, plants, physical and chemical effects were scientifically investigated. Data were statistically analyzed to determine whether marshes crossed by piers were different from marshes without piers

and at sites with piers how effects varied over distance from the pier. Dr. Vasilas' presented that, based on his research, the major effects of piers are:

- Decreased abundance of obligate marsh birds (shy birds that live only in marshes);
- Increased abundance of herons, egrets, gulls and terns;
- Decreased plant density under piers;
- Variable effect on plant density around the edges of piers (no effect at 11 out of 20 sites)
- Some evidence of erosion found at 3 out of 20 sites, but piers had no effect on sediment deposition or erosion outside of the pier shadow;
- Slightly elevated Arsenic (wood preservative) in water near pier (within 4 feet), but in no case did Arsenic, Copper or Chromium (all wood preservatives tested) exceed EPA water quality standards for aquatic life; and
- Arsenic, Copper and Chromium were elevated over background in sediments within 12 feet of piers, but all levels were below toxic thresholds for biological systems.

The Review Team discussed the relevance of Dr. Vasilas' findings in the Atlantic Coastal Bays to Sullivan Cove and concluded that, although the marshes are dissimilar due to the differences in plant species and density, they are similar in that they are both tidal marshes in low wave energy environments. It is also important to note that obligate marsh birds are not expected to occur in the wetlands of Sullivan Cove. The Breeding Bird Atlas Project (2002-2006), sponsored by the DNR and conducted by the Maryland Ornithological Society, did not document any obligate species within the survey block that included Sullivan Cove.

XII. SULLIVAN COVE AND LITIGATION OF RIPARIAN RIGHTS:

The pier proposed to be constructed from the Thomasson property has already been the subject of extensive litigation, both as to the propriety of the Department's prior issuance of a Tidal Wetlands License (04-PR-0642) to Mr. Paul Gunby in July 2004 and as to the ownership of the riparian rights associated with the property. The Olde Severna Park Improvements Association filed suit on September 2, 2004, claiming that it, and not the Thomassons (at that time, the property was owned by the Gunbys), owned the riparian rights to the property and that MDE's issuance of a pier license was invalid because of that reason and for other errors alleged to have been made by the Department. The Circuit Court for Anne Arundel County agreed with the Association on the riparian rights issue and, as a result, held that MDE had improperly issued the pier license. Because it based its decision on the riparian rights issue, the Circuit Court did not reach the other procedural and substantive arguments raised by the Association. The Court of Special Appeals reversed the Circuit Court decision holding, in an exhaustive opinion, that the Thomassons, and not the Association, owned the riparian rights to the property at issue and that, as a result, the Circuit Court had erred in reversing MDE's decision on that basis. *Paul Gunby, Jr., et al., v. Olde Severna Park Improvement Association, Inc., et al.*, 174 Md. App. 189 (2007). After granting certiorari, the Court of Appeals affirmed the intermediate appellate court decision, held that the Thomassons owned the riparian rights necessary to support the application for a pier license, and remanded the case back to the

Circuit Court for a decision on the other procedural and substantive arguments raised by the Association. *Olde Severna Park Improvement Association, Inc., et al. v. Paul Gunby, Jr., et al.*, 402 Md. 317 (2007). On March 13, 2008, the Circuit Court, on remand, upheld the issuance of the pier license.

XIII. FINDINGS OF THE MARYLAND DEPARTMENT OF THE ENVIRONMENT:

The shoreline of the Severn River in the vicinity of Sullivan Cove is characterized by a small beach with uplands populated by *Phragmites australis*, cedar trees, and other upland-type plants. A narrow shallow channel extends from the Severn River to the tidal pond located off Sullivan Cove. Traveling through the meandering entrance channel toward the tidal pond, an arm of the channel is located to the West. The tidal pond is surrounded by a natural shoreline populated by *Phragmites australis*, *Spartina alterniflora*, *Iva frutescens*, and other tidal and nontidal plants.

The Department performed a survey to determine water depths and the presence of submerged aquatic vegetation (SAV). Uncertain about the results of its water depth survey in the Severn River, MDE requested DNR to perform a bathymetric survey. The DNR survey, which tied the bathymetric depths into known controlled elevations, was similar to MDE's and incorporated into the final plans. The Department's SAV survey included both the Severn River and the tidal pond. In the Severn River, SAV was very sparse with only two plants being recovered, and it could not be determined whether the plants has been rooted in water depths to 11 feet deep at mean low water. In the tidal pond, SAV was found at about 50% to 75% density in water less than one foot deep at mean low water.

Discussion: The review of the Sullivan Cove pier applications has been guided by both statute and regulation. Subsection 16-201 of the Environment Article, Annotated Code of Maryland states that a person who is the owner of land bounding on navigable water is entitled to "make improvements into the water in front of the land to preserve that person's access to the navigable water." Although the courts have established that the applicants are riparian property owners and have a right to access the navigable waters of the Severn River, MDE has required the applicants to minimize impacts that may result from the construction of the piers. These minimization efforts include:

- New surveys for topography and tidal/nontidal wetland boundaries. In addition, surveys were performed by the State, the County and the applicant's consultant to identify and locate Atlantic White Cedars and other sensitive nontidal wetland species. The delineation and verification of these resources insure that all impacts are accounted for during the application review process.
- Water depths in the Severn River were surveyed by both the applicant's consultant and MDE. Uncertain about these results, MDE requested DNR to perform a bathymetric survey, which tied the bathymetric depths into known controlled elevations. The DNR survey results, which were incorporated into the final plans, enabled MDE to re-evaluate the length of each pier, while providing adequate docking

for current boat ownership. As a result, this re-evaluation, the length of the Schmidt pier was reduced by approximately 50 feet.

- Initial proposals for accessing the Severn River included the construction of three different walkways/piers, extending a maximum of 250 feet channelward of the mean high water line into the Severn River. Two of the structures crossed the tidal pond. The individual walkways/piers proposed by Mr. Thomasson and Mr. Jackson were combined into one joint-use pier, straddling the property line. The joint-use pier eliminated a second crossing of the tidal pond and the need to place pilings in close proximity to the confluence of the tidal pond and the Severn River. The confluence was further protected by extending the joint-use pier into the Severn River by an additional 40 feet. The joint-use pier reduced environmental impacts to both marsh and open water and aesthetic impacts to near-by property owners.

MDE has evaluated the applications with regard to the following criteria:

Ecological: Although the construction period will be of short duration and any impacts to marsh vegetation as a result of the construction will be restored to preconstruction conditions, MDE has taken additional steps to minimize the ecological impacts that may be associated with the construction of the proposed piers. First, the Schmidt walkway, as well as the Thomasson/Jackson joint-use pier, will be elevated to allow additional light to reach marsh vegetation. Second, the applicant's contractor has provided a construction methodology designed to reduce impacts that would normally occur to existing marsh vegetation through the use of marsh construction mats. Third, due to the extensive SAV coverage in the tidal pond, MDE will place a time-of-year restriction on the construction of the joint-use pier, prohibiting construction from April 15 to October 15 of any year. On the other hand, a time-of-year restriction for SAV is not necessary for the Severn River, since MDE's survey did not find any SAV resources in the vicinity of the proposed piers. Finally, the OSPIA objected to the piers stating that the piers would adversely impact obligate birds (shy birds). According to DNR, however, no obligate marsh birds are expected to occur in the wetlands of Sullivan Cove. The Breeding Bird Atlas Project (2002-2006), sponsored by DNR and conducted by the Maryland Ornithological Society, did not document any obligate species within the survey block that included Sullivan Cove.

Aesthetic: The proposed Schmidt walkway is the minimal amount necessary to access the shoreline. Since this is a secluded area, the walkway should only be slightly visible above the existing marsh vegetation to someone navigating this branch of the tidal pond channel in a kayak, canoe or similar vessel. The pier may impact the view from the Olde Severna Park households. However, there are other piers located to the east along this shoreline as well.

The 458-foot elevated joint-use pier proposed by Mr. Thomasson and Mr. Jackson will impact the view of anyone entering the tidal pond. There will no longer be an uninterrupted view of tidal and nontidal marshes and the natural beauty of the area. In addition, anyone navigating the tidal pond in a kayak, canoe or similar vessel will have to pass through a 30-foot elevated section to get to the southern section of tidal pond. While

MDE can not eliminate the visual impact of the joint-use pier, it has minimized the impact by eliminating the second tidal pond crossing.

Recreational: The piers will affect some recreational boating activity. Small personal watercraft such as canoes and kayaks will have to travel channelward around the end of the proposed piers prior to entering the entrance to the unnamed tidal pond. Upon entering the tidal pond, navigation will not be impeded by the joint-use pier because it will be elevated to provide adequate clearance. For the property owners, construction of the proposed piers will enhance boating and other water-based activities.

Developmental: The construction of the Thomasson/Jackson joint-use pier and the Schmidt walkway/pier will not require additional structures to support them. The applicants will not require any other improvements such as roads, parking, or water and sewerage service.

Economic: The construction of the Thomasson/Jackson joint-use pier and the Schmidt walkway/pier will provide sales/employment for the selected suppliers and contractors. In addition, the real estate value of these properties will likely increase as a result of the pier construction.

Other: The DNR has suggested that the proposed piers may alter sand transport in the area. Shorelines are dynamic and often respond to structures that are placed along their length or in an adjacent waterway. However, the proposed piles supporting the piers will be on 10-foot centers and very few piles will be located in the near-shore area. While each pile may deter wind driven waves or boat wakes from moving sand slightly along the shoreline, the University of Delaware study shows that piers had no effect on sediment deposition or erosion outside of the pier shadow.

XIV. CONCLUSION:

Considering the comments from opponents and proponents of the project, the comments from the Review Team, the research conducted by the University of Delaware, the nature of Sullivan Cove, and the proposed design of the Schmidt walkway/pier and the Thomasson/Jackson joint-use pier, MDE concludes:

- Sullivan Cove is a large tidal cove and the adjacent tidal pond and its wetland complex is unique to the Severn River. However, there are many similar coves and tidal ponds in Maryland.
- The only notable long-term environmental impact of the proposed piers would be reduced plant density under the piers due to shading. Temporary impacts associated with construction activities will be restored to preconstruction conditions.
- As currently configured, the piers will not have a significant impact on erosion, sedimentation or tidal flows in Sullivan Cove, the adjacent tidal pond, or the nontidal wetlands at the southern end of the tidal pond.

- Future dredging activities in the tidal pond associated with the joint-use pier are unlikely, but will be addressed by a special condition prohibiting dredging in the tidal pond.

While Sullivan Cove is listed in the publication "Gems of the Severn" and has been cited as a unique and valuable area for both fauna and flora, MDE does not rate or rank the quality of the wetland being impacted by a proposed project during the application review process. The Department assumes that the wetland is performing important ecological functions, regardless of its "uniqueness." While the "uniqueness" of a site in terms of wetland type does not specifically play into a project decision, a unique habitat that supports a rare, threatened, endangered species, or otherwise supports a sensitive species would be taken into consideration in a permit decision. In this particular case, DNR identified Atlantic white cedar and Pitch pine along the eastern rim of the tidal pond, occupying a narrow band of nontidal wetland at the base of the forested slope. The Department, in conjunction with DNR and Anne Arundel County, located the specimens in question and requested that the proposed plans be revised to protect them from any construction activity.

The wetlands regulatory process focuses on avoidance, minimization and mitigation for impacts that are determined to be unavoidable. In reviewing these applications, MDE has been guided by the public policy set forth in law and regulation and has considered the effect of the proposed work on the State's plant, fish and wildlife resources. In addition, the review of these projects has taken into account ecological, economic, recreational, developmental, and aesthetic considerations. In consideration of the applicants' riparian rights, the site characteristics and the nature of the proposed work, MDE concludes that the application satisfies the criteria for issuance of a State wetlands license.

DEPARTMENT OF THE ENVIRONMENT APPROVAL: Gary T. Setzer

Gary T. Setzer, Administrator
Wetlands and Waterways Program

DATE: 02/11/09